IN THE

Supreme Court of the United States

October Term, 1976

No. 76-746

GEORGE GRAVES, Et., Al.,

Petitioners,

-against-

THOMAS E. SNEED, Et. Al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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To the Honorable The Chief Justice, and Associate Justices of the Supreme Court of the United States

Petitioners George Graves, et al., respectfully pray that a Writ of Certiorari issue to review the final judgment of the United States Court of Appeals for the Sixth Circuit entered on the 1st day of September, 1976 affirming the judgment of the United States District Court for the Western District of Tennessee.

Opinions of the Courts Below

The opinion of the District Court is set forth infra at page 5a* and is not reported. The opinion of the Court of Appeals for the Sixth Circuit is set forth infra at page 1a and is not yet officially reported.

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*Numerical references followed by "a" are to the Appendix included herein.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether the Court of Appeals final judgment affirming the District Court judgment dismissing the complaint for lack of jurisdiction was in error.

2. Where federal-agent-trustee of land securing a Farmers Home Administration loan becomes aware of a 3rd party conspiracy to defraud the borrower of the land, corpus of the trust, may he join the conspiracy with the necessary aid and abettance, inter alia, of removing cloud on the fraudulent 3rd party title by accepting prepayment of the Farmers Home Administration (FHA) loan from the 3rd party conspirators, cancel and release the FHA lien/Note and trust deed without:

a) becoming a party to the conspiracy;

b) incurring personal/federal liability in damages to the borrower; and

c) giving rise to federal question jurisdiction?

3. Where the Federal District Court entertains the question of plaintiffs' alleged rights to recover damages against federal agents for fraud under the United States Constitution, laws, or treaties, does the Court assume jurisdiction?

4. Where plaintiffs' complaint alleges a right to recover under the constitution, laws, or treaties of the United States, must the Federal District Court take federal question jurisdiction of the action?

Statement of the Case

The petitioners owned certain lands located in Haywood County, State of Tennessee. In 1940 the petitioners borrowed $6500 from the FHA on a Note payable in annual installments of principle and interest over a period of 40 years, secured by a deed of trust to the Federal Agent Trustee. In 1960 the petitioners became unable to maintain the installments current and obtained a 3rd party friend, C.A. Rawls (Rawls) to subsidize same until such time they (petitioners) would be financially able to resume the said payments and reimburse Rawls. Mr. Rawls, subsequently obtained petitioners' execution of certain deeds of the subject property to him as security of installments on the FHA loan he may advance. Some ten years thereafter, Mr. Rawls, in a conspiracy to sell the land, registered the security deeds in the County Register's office in connection with a purported conveyance by him to a 4th party, L.S. McCool, et al for a sum of $20,000.00. Rawls and McCool then sought to remove the FHA cloud on title, offering to assume the loan obligation of the borrowers, which was refused. The FHA agent, Thomas E. Sneed (Sneed) was then enlisted in the conspiracy. In carrying out the conspiracy prepayment of the loan by Rawls was accepted over the borrowers' objections, with cancellation and release of the FHA lien and trust deed in deprivation of the petitioners/borrowers' rights, title, interest, use and occupancy of the subject lands.

The District Court held there were no damages sustained by the petitioners due to FHA accepting prepayment of the loan from Rawls, that there was no federal question jurisdiction and dismissed, having ruled out citizenship diversity jurisdiction, and jurisdiction under the Tort Claims Act. The Court of Appeals affirmed the District Court decision.

Reasons for Granting the Petition for a Writ of Certiorari

Petitioners submit that the definitive pronouncement of this Court in the case of *Bell v. Hood*, 327 U.S. 677 clearly establishes federal question over this action, as may be gathered from the Rule laid down by the case as follows:—

> A case within the jurisdiction of the Federal courts under 28 USC 41(1) over actions arising under the Constitution or laws of the United States, is stated by a complaint so drawn so as to claim a right to recover under the Constitution and laws of the United States, and is therefore one which a Federal district court is bound to entertain unless the alleged claim under the Constitution or Federal statutes clearly appears to be immaterial and made solely for the purpose of getting into the Federal courts, or unless it is wholly unsubstantial and frivolous.

The District Court entertained the question of the damages alleged in the complaint against the federal agents with the erroneous view that prepayment of the loan was made before the fraud was perpetrated, concluding that there were no wrongful acts committed by the federal agents, and that the petitioners were not damaged thereby. The Court of Appeals also took the view of the acts of the federal agents and adopted the view of the District Court with an affirmance of the District decision.

ARGUMENT

The extent to which the District Court erred in an unfortunate misinterpretation of the facts led to the erroneous conclusion that there was no wrongdoing on the part of the federal agents. In view of this conclusion the Circuit Court took no view of the alleged wrongdoing of the federal

agents in its opinion that ". . . This case involves yet another effort to make a federal question out of litigation where exclusive jurisdiction is in State Courts. . . .".

On the contrary, the direct role played by the federal agents in the conspiracy to defraud the petitioners was the sole ingredient necessary to accomplish the fraud. Rawls had prematurely registered his security deeds, executed a deed to McCool registered and bona fide on its face with no apparent defects on title except the recorded FHA lien previously on the record.

When the FHA Agent was approached by the conspirators regarding prepayment, he took the matter up with the petitioners. At that time he had full knowledge of what had developed and of the fraudulent purpose and intent involved in accepting prepayment over the petitioners' objections, e.g. the conspirators could then claim good title to the property, free from any encumbrances of record, could oust the petitioners and dispose of the property as they desired. Mr. Rawls is a strong financial member of the rural community of Haywood County, Tennessee, owning businesses including two insurance companies totaling over $5 million in assets. Mr. McCool is also equally affluent with land holding of some 2,000 acres in the community.

While the complaint seeks certain equitable relief, it also seeks relief at law. While jurisdiction of actions in equity is in State Courts, Article III(2) of the Constitution specifically states of the Federal Courts:—

> "The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, under their authority."

The complaint is not required to allege with detailed specificity the federal or Constitutional claims of the petitioners to show that the matter in controversy arose under the Constitution of the United States. *Wiley v.*

Sinkler, 179 U.S. 58, 64, 65, 45 L Ed 84, 88, 89, 21 S.Ct. 17; *Swafford v. Templeton,* 185 U.S. 487, 491, 492, 46 L.Ed. 1005, 1007, 1008, 22 S. Ct. 783. The reason for this is that the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court grant relief as well as to determine issues of fact arising in the controversy. *Bell v. Hood,* 327 U.S. 677, 681.

It is established practice of the Supreme Court of the United States to sustain jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution. *Philadelphia Co. v. Stimson,* 223 U.S. 605, 56 L. Ed 570, 32 S.Ct. 340; *Hays v. Seattle,* 251 U.S. 233, 64 L. Ed. 243, 40 S. Ct. 125; *Pennoyer v. McConnaughy,* 140 U.S. 1, 35 L. Ed. 363, 11 S. Ct. 699; *City R. Co. v. Citizens' R. Co.,* 166 U.S. 557, 41 L. Ed. 1114, 17 S. Ct. 653; *Mitchell v. Dakota Cent. Teleph. Co.,* 246 U.S. 396, 407, 62 L. Ed. 793, 799, 38 S. Ct. 362.

There can be no doubt that the federal agents recognized that the 3rd party offer to prepay the FHA loan was specious unless there was knowledge, permission, and consent thereto on the part of the petitioners; otherwise the federal agents would not have sought with great anxiety and personal effort to so obtain same before accepting such prepayment.

There can be no doubt that the District Court and the Court of Appeals recognized the unique role played by the federal agents in bringing about full accomplishment of the conspiracy to oust the petitioners from land which was the corpus of the federal trust.

CONCLUSION

The judgment of the Court of Appeals should be reversed and the action remanded to the District Court for trial.

Respectfully submitted,

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Counsel for Petitioners

APPENDIX

Opinion of the United States Court of Appeals

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

No. 75-1746—September Term, 1975

(Argued June 8, 1976 Decided September 1, 1976)

Docket No. 74-1746

GEORGE GRAVES, ET AL.,

Plaintiffs-Appellants,

-against-

THOMAS E. SNEED, ET AL.,

Defendants-Appellees.

Before:

Phillips, Chief Judge, McCree, Circuit Judge, and Green, Senior District Judge.

Appeal from a judgment of the United States District Court for the Western District of Tennessee, which dismissed the complaint for lack of jurisdiction, without prejudice. We affirm.

WILSON G. GRAVES, New York, N.Y. for Plaintiffs-Appellants.

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*Honorable Ben C. Green, Senior District Judge, United States District Court for the Northern District of Ohio, sitting by designation.

THOMAS F. TURLEY, United States Attorney General for the Western District of Tennessee, for the federal Defendants-Appellees

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PHILLIPS, Chief Judge:

This case involves yet another effort to make a federal question out of litigation where exclusive jurisdiction is in State Courts. Basically it is a traditional action in equity—to have deeds declared to be mortgages, to obtain an accounting and to compel the reconveyance of certain real estate to plaintiffs. Chief District Judge Bailey Brown dismissed the complaint for lack of jurisdiction, but without prejudice. We affirm.

Appellants contend that they are the owners of two tracts of land in Haywood County, Tennessee; that in December 1947 they mortgaged the land by executing a deed of trust to secure a promissory note payable to the Farmers Home Administration in annual installments over a period of forty years; that in March 1961, for the purpose of maintaining a current status on payments due on the note, they made an oral arrangement with defendant C.A. Rawls, whereby Rawls would advance the installments as they became due and payable and would continue to do so until plaintiffs would be in a financial position to resume payments on their own behalf; that thereafter, at the instance of Rawls, plaintiffs executed two documents in the form of deeds, conveying portions of the land to Rawls as security for the installments advanced by him; that Rawls prepaid the entire balance due on the indebtedness; that the lien provided by the original deed of trust was discharged by a release executed by the Farmers Home Administration; and that the release was executed and recorded without the consent of plaintiffs.

The complaint prayed for cancellation of the deeds to Rawls, which are averred to be security instruments, not

deeds; for an accounting; for ejectment; and for $100,000 in damages.

The original complaint averred jurisdiction on the basis of diversity of citizenship. The District Court correctly held that there is no diversity jurisdiction because the plaintiffs and some of the defendants are citizens of Tennessee. Plaintiffs then sought to amend so as to aver jurisdiction under 28 U.S.C. 1331 (federal question jurisdiction) and 28 U.S.C. 1346(b) (the Federal Tort Claims Act). We agree with Chief Judge Brown that section 1331 does not confer jurisdiction under the averments of the complaint because no construction of the Constitution, laws or treaties of the United States could be determinative of this litigation. We also agree that no jurisdiction is conferred by the Federal Tort Claims Act. The District Court was correct in holding that the acceptance of a prepayment on a loan from the record owner of title to the land would not give rise to a federal cause of action against the Farmers Home Administration.

The United States district courts are not courts of general jurisdiction. They have no jurisdiction except as prescribed by Congress pursuant to Article III of the Constitution. *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943); *Kline v. Burke Construction Co.*, 260 U.S. 226, 234 (1922); *Stevenson v. Fain*, 195 U.S. 165 (1904); *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1867); *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 448 (1850); *Turner v. Bank of North America*, 4 U.S. (4 Dall.) 7, 9 (1799); *Steckel v. Lurie*, 185 F.2d 921, 924 (6th Cir. 1950); *Fisch v. General Motors*, 169 F.2d 266 (6th Cir. 1948), cert. denied, 335 U.S. 902 (1949).

Jurisdiction to declare a deed to Tennessee lands to be a mortgage lies in the State Chancery Courts. As stated in Givson's Suits in Chancery, section 450(3) (5th Ed. 1955):

> Upon a bill being filed to have a deed absolute on its face, declared to be a mere mortgage, or

> security for a debt, a Court of Chancery will allow the complainant to show the truth of his allegation by parol testimony. So, a complainant may upon a bill being filed for that purpose, show by parol evidence, that when a deed absolute on its face was executed, there was coupled with it on parol the right to repurchase or right to repay the purchase-money and have a re-conveyence.

We affirm the judgment of the District Court on the grounds that no federal question is presented, but without prejudice to any rights the plaintiffs may have to proceed in the State courts of Tennessee.

DECISION OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

GEORGE GRAVES, Et Al.,
Plaintiffs.

v *Civil C-74-50 EASTERN*

THOMAS E. SNEED, Et Al.,
Defendants.

MEMORANDUM DECISION

This is an action to compel the reconveyance of certain real property to the plaintiffs. Plaintiffs contend that defendant C.A. Rawls loaned them money and that, though the instruments executed in favor of Rawls were deeds on their face, they were intended to be security instruments. Plaintiffs further contend that when George Graves later refused to sell the property to Rawls, Rawls, with the assistance of the defendant Sneed, prepaid an outstanding Farmers Home Administration loan on the property and then registered the instruments that appeared to be deeds.

The federal defendants have moved to dismiss for lack of jurisdiction and for failure to state a claim upon which relief can be granted.

Obviously, there is no diversity jurisdiction since some of the plaintiffs and some of the defendants are citizens of the State of Tennessee. 28 U.S.C. §1332.

Plaintiffs, however, seek to amend alleging jurisdiction under 28 U.S.C. §1331 (federal question jurisdiction) and §1346(b) (Tort Claims Act). It is the opinion of this court

that neither of these statutes would confer jurisdiction in this case. No construction of the United States Constitution, laws or treaties will be determinative in this case. 28 U.S.C., §1331. Moreover, plaintiffs cannot proceed under the Tort Claims Act because, among other reasons, it is not alleged that plaintiffs have exhausted their administrative remedies which is required by that Act.

It should be pointed out that the only complaint against the federal defendants is that the Farmers Home Administration acted improperly in accepting prepayment of the loan on the property by defendant Rawls. It is this court's view that the acceptance of such prepayment, without permission of plaintiffs, would not give rise to a cause of action against the Farmers Home Administration. If, as a result of wrongful conduct of Rawls, plaintiffs are entitled to have him reconvey the property to them, Rawls would in equity be subrogated to the mortgage of the Farmers Home Administration and plaintiffs would be entitled to repay Rawls under the same terms and conditions as they would have been entitled to repay the Farmers Home Administration. Thus plaintiffs have in no wise been damaged by the acceptance of the repayment in a lump sum by the Farmers Home Administration.

The Clerk will therefore enter a final judgment dismissing this action for lack of jurisdiction and without prejudice.

ENTER this 19th day of March, 1975.

s/ Bailey Brown
CHIEF JUDGE

JUDGMENT OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE
Western District of Tennessee

CIVIL ACTION FILE NO. C-74-50 E

GEORGE GRAVES, et al

vs.

JUDGMENT

THOMAS E. SNEED, et al

This action came on for consideration before the Court, Honorable Bailey Brown, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that in compliance with a Memorandum Decision entered by the Court on March 19, 1975, this action is dismissed without prejudice for lack of jurisdiction.

Dated at Memphis, Tennessee, this 20th day of March, 1975.

s/ J. Franklin Bird
Clerk of Court

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MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

Petitioners claim that they are the owners of two tracts of land in Haywood County, Tennessee. In December 1947 petitioners mortgaged the land by executing a deed of trust to secure a promissory note payable to the Farmers Home Administration ("FHA") in annual installments over a period of forty years. In March 1961 they executed two documents in the form of deeds conveying portions of the land to respondent C. A. Rawls, who assumed responsibility for keeping the payments current.

The facts are stated by the court of appeals (Pet. App. 2a-3a).

In 1970 Rawls prepaid the balance due on the note. The FHA accordingly executed a release discharging its lien. The release was executed and recorded without the consent of petitioners. Rawls conveyed the land free of the lien to L. S. McCool.

Petitioners then brought suit in the United States District Court for the Western District of Tennessee against Sneed (the FHA loan officer), the Administrator of the FHA, Rawls and his wife, and the McCools, requesting a cancellation of the deeds to Rawls, an accounting, ejectment, and $100,000 in damages.

The original complaint alleged jurisdiction on the basis of diversity of citizenship. The district court held that there was no diversity jurisdiction because the petitioners and some of the respondents were citizens of Tennessee. Petitioners then sought to amend the complaint to allege jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 1346(b).

The district court dismissed without prejudice for lack of subject matter jurisdiction (Pet. App. 5a-7a). The court of appeals affirmed (Pet. App. 1a-4a).

The courts below correctly held that petitioners' complaint does not establish federal question jurisdiction under 28 U.S.C. 1331. To establish jurisdiction under that provision, it must be shown that federal law is a direct element in the plaintiff's claim; it is not enough that it is involved remotely or indirectly. *Burgess* v. *Charlottesville Savings & Loan Ass'n*, 477 F. 2d 40 (C.A. 4); *Davidson* v. *General Finance Corp.*, 295 F. Supp. 878 (N.D. Ga.); *Baker* v. *FCH Services, Inc.*, 376 F. Supp. 1365 (S.D. N.Y.). A suit on an agreement between private parties does not raise a federal question merely because the agreement was authorized by federal law or a federal agency has in some way approved it. *Baker* v. *FCH Services, Inc., supra.*

As the court of appeals correctly held (Pet. App. 2a-4a), petitioners' complaint raises only a question of state law: whether the instruments executed to Rawls, though deeds on their face, were intended as security interests. The gravamen of the complaint is that Rawls attempted to acquire and reconvey a fee simple interest in property in which he had only a security interest.

The only allegation in the complaint concerning the federal respondents is that the FHA improperly accepted prepayment of petitioners' loan and released its lien without petitioners' consent. That allegation is irrelevant to the substance of petitioners' claim. The FHA's acceptance of payment of its loan, and the discharge of its lien, have nothing to do with petitioners' entitlement to their land. That entitlement depends exclusively upon state conveyancing law.[1]

Indeed, the FHA is a disinterested party in the dispute between petitioners and Rawls. If under state law the instrument petitioners delivered to Rawls was not a deed in fee simple but a security interest, and if petitioners are therefore entitled to recover their land, then Rawls, by paying the FHA loan, will simply have become subrogated to the rights that FHA had before the loan was paid. In short, this case is nothing more than a traditional action in equity within the exclusive jurisdiction of the state courts.[2]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

FEBRUARY 1977.

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[1]Accordingly, petitioners' assertion to the contrary notwithstanding, their complaint, properly read, failed to "claim a right to recover under the Constitution and laws of the United States" (Pet. 4) within the meaning of this Court's decision in *Bell* v. *Hood*, 327 U.S. 678.

[2]The courts below also correctly held that the complaint did not state a claim under the Federal Tort Claims Act, 28 U.S.C. 1346(b). First, the Act authorizes suits only against the United States, which was not named as a defendant in the complaint. Second, 28 U.S.C. 2675 requires a plaintiff to exhaust his administrative remedies before he may sue the United States, which petitioners failed to do here.

DOJ-1977-02

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Respondents' memorandum in opposition, in keeping with a general pattern of analysis of the facts stemming from the District Court interpretation, merely argues civility in point and time of neutrality on the part of the federal defendants regarding the private agreement between the petitioners and respondent C.A. Rawls.

Respondents' memorandum isolates the federal defendants' act of acceptance of prepayment of the loan from their acts of alleged conspiracy and the overwhelming impact of the fraud by making the analysis (Res. memo 1):

> "In 1970 Rawls prepaid the balance due on the note. The FHA accordingly executed a release discharging its lien. The release was executed and recorded without the consent of petitioners. Rawls conveyed the land free of the lien to L. S. McCool."

A plethora of facts show the respondents' problem arose specifically because Rawls conveyed of record the land to McCool before it was free of the lien.

Respondents' memorandum asserts the facts as so stated by the Court of Appeals (Pet. App. 2a-3a), which statement of facts likewise avoids the alleged acts of conspiracy and fraud on the part of the federal defendants, to wit at page 2a, of the petition:

> "* * * that Rawls prepaid the entire balance due on the indebtedness; that the lien provided by the original deed of trust was discharged by a release executed by the Farmers Home Administration; and that the release was executed and recorded without the consent of plaintiffs."

This presupposes that no disharmony was aroused except lack of consent on the part of the petitioners.

The action was brought in the Federal Court as a direct result of the conspiratal, fraudulent role played by the federal defendants purposely to enable consumation of the Rawls scheme to take the land from the petitioners without defect on the face thereof.

It is nowhere contended by the petitioners that their private agreement with Rawls related to federal question jurisdiction in any respect, or that its approval by the Federal Agency would give federal question jurisdiction.

It is not the gravamen of the complaint that

> "* * * Rawls attempted to acquire and reconvey a fee simple interest in property in which he had only a security interest." (Res. memo. 2)

It is gross misinterpretation to assert that

> "The only allegation in the Complaint concerning the federal respondents is that the FHA improperly accepted prepayment of petitioners' loan and released its lien without petitioners' consent." (Res. memo. 3).

Indeed, FHA would hope to be an innocent bystander or disinterested party in the situation as it developed, but the facts show that FHA joined the conspiracy to take petitioners' land. The apropos cliche is that you cannot unscramble the eggs.

It is therefore respectfully submitted that the petition should be granted.

Respectfully submitted,

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Dated: February 9, 1977